

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION**

Kenneth Syncere Rivera,)	Civil Action No.: 8:18-cv-02301-JMC
)	
Plaintiff,)	
)	
v.)	ORDER
)	
)	
)	
Bryan Stirling and South Carolina)	
Department of Corrections,)	
)	
Defendants.)	
_____)	

This matter is before the court for review of the Magistrate Judge’s Report and Recommendation (“Report”) filed on September 12, 2018. (ECF No. 10.) The Report addresses Plaintiff Kenneth Syncere Rivera’s (“Plaintiff”) suit under 42 U.S.C. § 1983 and recommends that the court deny Plaintiff’s Motion for Leave to Proceed in forma pauperis. (ECF No. 7.) For the reasons stated herein, the court **ACCEPTS** the Report and **DENIES** Plaintiff’s Motion.

I. FACTUAL AND PROCEDURAL BACKGROUND

The Report sets forth the relevant facts and legal standards which this court incorporates herein without a full recitation. (ECF No. 10.) As brief background, on August 17, 2018, Plaintiff, proceeding *pro se*, filed his Complaint, alleging constitutional violations pursuant to 42 U.S.C. § 1983. (ECF No. 1.) Specifically, in his Complaint, Plaintiff alleges that the prisoners at Broad River Correctional Institution are being held in poor conditions during the alleged state lock down. (*Id.* at 1.) Plaintiff asserts that prisoners are not able to clean their cells, access the law library, receive rehabilitation, receive medical care, receive mental health evaluations, engage in recreation, access the canteen, or send their mail. (*Id.* at 1–2.) He also alleges the

facilities are being kept in poor condition. (*Id.* at 1.) His allegation regarding denial of medical care for his migraine pain is already present in another action pursuant to 42 U.S.C. § 1983, which remains pending before the court, wherein he was granted leave to proceed *in forma pauperis*. (*See Rivera v. Stirling*, No. 8:17-cv-2087.) In terms of relief, Plaintiff desires \$20,000.00 in punitive damages and \$20,000.00 in compensatory damages. (*Id.* at 5.)

On September 10, 2018, Plaintiff filed a *pro se* Motion for Leave to Proceed *in forma pauperis*. (ECF No. 7.) Plaintiff has not paid the filing fee. On September 12, 2018, the Magistrate Judge issued a Report. (ECF No. 10.) The Report reasoned that Plaintiff's Motion should be denied because he is subject to the three strikes rule of the Prison Litigation Reform Act. (*Id.* at 2.) This rule bars prisoners who have filed prior frivolous litigation in a federal court from pursuing certain types of federal civil litigation without prepayment of the filing fee. (*Id.*) The Report found that since Plaintiff does not fall under exception for imminent danger of serious physical injury, he cannot proceed *in forma pauperis* and must pay the filing fee in full to proceed with the Complaint. (*Id.* at 3.) For these reasons, the Report ultimately recommended that the court deny Plaintiff's Motion for Leave to Proceed *in forma pauperis* and that Plaintiff be given twenty-one (21) days from the date this court rules on the Report to pay the filing fee of four hundred (\$400.00) dollars. The Report recommended that the Office of the Clerk of Court withhold entry of judgment until such time expires and that the Clerk enter the required final judgment at the close of the 21-day period. (*Id.* at 4.)

II. STANDARD OF REVIEW

The Magistrate Judge's Report is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge only makes a recommendation to this court, and the recommendation has no presumptive weight. *See Mathews*

v. Weber, 423 U.S. 261, 270-71 (1976). The responsibility to make a final determination remains with the court. *Id.* at 271. As such, the court is charged with making *de novo* determinations of those portions of the Report and Recommendation to which specific objections are made. *See* 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b)(3). Thus, the court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

III. DISCUSSION

The parties were apprised of their opportunity to file objections to the Report on September 12, 2018. (ECF No. 10 at 5.) Objections to the Report were due by September 26, 2018. (*Id.*) However, objections were due by September 29, 2018, if a party was served by mail or otherwise allowed under Fed. R. Civ. P. 6 or Fed. R. Crim. P. 45. (*Id.*) Neither party filed an objection to the Report.

In the absence of specific objections to the Magistrate Judge's Report, this court is not required to provide an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Instead, the court must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note). Furthermore, failure to file specific written objections to the Report results in a party's waiver of the right to appeal from the judgment of the District Court based upon such recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984). After a thorough and careful review of the record, the court finds the Magistrate Judge's Report provides an accurate summary of the facts and law in the instant case. (ECF No. 10.) Since no specific

objections were filed by either party, the court adopts the Report herein. *Camby*, 718 F.2d at 199.

IV. CONCLUSION

After a thorough review of the Report and the record in this case, the court **ACCEPTS** the Magistrate Judge's Report and Recommendation (ECF No. 10) and incorporates it herein. Therefore, the court **DENIES** Plaintiff's Motion for Leave to Proceed in forma pauperis (ECF No. 7), **INSTRUCTS** Plaintiff that his action will be dismissed if he fails to pay the \$400.00 filing fee on or by November 22, 2018, and **ORDERS** the Office of the Clerk of Court to withhold entry of judgment until the close of the 21-day period for payment of the filing fee.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "J. Michelle Childs". The signature is written in a cursive, flowing style.

United States District Judge

November 1, 2018
Columbia, South Carolina